

CRIMINAL MISC. APPLICATION NO. 2144 OF 1995.

Date of decision: 19.3.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr.J.S. Unwala for Mr. P.K. Jani, advocate for petitioner.

Mr. S.R. Divetia, A.P.P. for respondent No.1-State.

Mr.J.M. Barot, advocate for respondent No.2.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram:R.R.Jain, J.

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March 13, 1996.

Oral judgment:

Respondent No.2/original accused No.1 was charge-sheeted for offences punishable under Sections 302, 323, 504 read with Section 34 of the Indian Penal Code read with Section 135 of the Bombay Police Act in a case registered as C.R.No.444/94 with Visnagar Police Station.

As alleged, on 17.12.1984 at about 8 P.M. respondent No.2/original accused No.1 had injured Kamlesh with knife blows and ultimately injured succumbed to the injuries.

From the record it transpires that respondent No.2 moved Criminal Miscellaneous Application No.249 of 1995 under Section 439 of the Criminal Procedure Code after filing of charge-sheet and same came to be rejected vide order dated 6.4.1995. Despite this fact, within quick succession another application being Criminal Misc. Application No. 391 of 1995 was moved before the learned Additional Sessions Judge, Mehsana, which was allowed and respondent No.2 was enlarged on bail.

Aggrieved by the order dated 31.5.1995 the original complainant has knocked the doors of this Court under Section 439 (2) of the Criminal Procedure Code for cancellation of bail.

On the face of it, the impugned order is patently erroneous as is not in conformity with the law laid down by the Apex Court of the land as well as this High Court time and again. The learned Judge appears to have overlooked the ratio laid down by this Court in the case of State v. Lalji Popat, 1988 (2) GLR 1073, wherein this Court has laid down criteria under which powers vested under Sections 437 and 439 of Criminal Procedure Code are to be exercised. From the order it transpires that on perusal of material including post-mortem note placed before the court, the learned Judge, prima facie, was of the view that case under Section 302, 323 and 304 is made yet the age factor of respondent No.2 weighed the learned Judge for enlarging him on bail. In my view, the considerations which have weighed with the learned Judge are de hors the provisions of law and not sound. Not only this but the learned Judge has also not appreciated the circumstances under which successive bail applications can be entertained. On this point, my attention is drawn to the decision of the Supreme Court in the case of State of Maharashtra v. Buddhikota Subha Rao, AIR 1989 SC 2292 which lays down that successive applications for bail can only be entertained when there is substantial change in the circumstance. A successive bail application entertained without substantial change in the circumstances is illegal and against the provisions of law. In this case no change of circumstance is shown. The previous application which was rejected on 6.4.1995 is placed on record at Annexure B and the subsequent application, being Misc. Cri.Application No.391 of 1995 giving rise to the impugned order is Annexure C. On perusal, it appears that both the applications are verbatim same and no change in circumstance is pleaded or shown. In my view, in absence of change in circumstance, the successive (second) application No.391 of 1995 is not maintainable. The only additional ground pleaded in

second application is that his mother is old. In my view, this is not a changed circumstance when the application is preferred within very short time of one and half months as the same was also prevailing at the time of previous application.

The learned Judge did come to a positive finding that prima facie case under Section 302 is made out against respondent No.2. If the learned Judge had come to a positive finding about prima facie case, in my view, the case squarely falls under exception carved out in Section 437 of Cr.P.C. Therefore, it is a fit case wherein interference of this Court is called for as the learned Judge has not exercised discretion judiciously and in conformity with law prevailing. Mr. Divetia, learned A.P.P. for respondent No.1, has also supported the case of the petitioner for cancellation of bail. Mr. Barot, learned advocate for respondent No.2, relying on a decision of the Supreme Court in the case of Dolat Ram v. State of Haryana, (1995) 1 SCC 349 has argued that if once bail is granted then should not ordinarily be cancelled. In my view, the submission does not get corroboration from the observations made by the Supreme Court. It has been held by the Supreme Court that while considering question of cancellation of bail, cogent and overwhelming circumstances must be pleaded and shown. What is sought to be conveyed by the Supreme Court is that bail once granted should not be cancelled in mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. In my view, the judgment supports the case of petitioner because the order of bail granted by the learned Additional Sessions Judge, on the face of it, is in violation of provisions of law as well as pronouncement of the Supreme Court in Buddhikota Subha Rao's case (supra). The fact that the order of granting bail is patently erroneous and dehors the provisions of law, by itself and very cogent and overwhelming circumstances and interference by this court would amount as passing order in mechanical manner.

In the result, the petition is allowed. The impugned order dated 31.5.1995 passed in Criminal Misc. Application No.391 of 1995 by the learned Additional Sessions Judge, Mehsana, granting bail to respondent No.2 is hereby quashed and set aside. The respondent No.2 is ordered to surrender before the Sessions Court, Mehsana on or before 26.3.1996, failing which the learned Sessions Judge, Mehsana, shall be at liberty to take

appropriate steps in accordance with law. Rule made  
absolute accordingly.